



## **ANN HRAYCHUCK**

**STATE REPRESENTATIVE**

### **Testimony of Rep. Ann Hraychuck Before the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing SB 336 – DNA Collection at Time of Felony Arrest**

Good afternoon Chairwoman Taylor and committee members. I appreciate having the opportunity to speak with you about Senate Bill 336.

Today you will hear testimony from Jayann Sepich, who flew here from New Mexico to share the horrific story of the brutal rape and murder of her 22 year old daughter, Katie. If there had been a law in New Mexico in 2003 that mandated taking DNA samples at the time of arrest, as they do now, Katie's killer would have been taken off the streets in three months, rather than three years.

As a former member of law enforcement, I served as a Sensitive Crimes Investigator for over 20 years. Some of the most brutal and horrific crimes committed in Polk County came across my desk. And with each case, I would meet with the victim or with the victim's family, and assure them that I would do everything in my power to find the individual or individuals who brought so much pain into their lives.

I spent my entire law enforcement career looking for a better way to do things - a more effective and efficient way to put the pieces of the crime puzzle together to solve cases and get violent offenders off the street.

As a secretary in 1971, my first request of the Polk County Board of Supervisors was for an electric typewriter to replace the manual typewriter I was using to type officers' reports. An electric typewriter was the state of the art method to quickly get critical data onto paper to disseminate to officers to help them solve cases.

Thirty years later, as the Sheriff, my last request to the Board was for a state-of-the-art six million dollar radio tower system. This system would enable our portable radios to work 100 percent of the time when officers were calling for help and would ensure that ambulance and fire departments would get all of their pages.

As a State Legislator, my commitment to public safety and "looking for a better way" continues. That is why I am sitting before you today. I am committed to doing everything in my power, OUR POWER, to ensure that law enforcement continues to have the tools they need to lock up our most violent criminals.

Taking DNA samples at the time of arrest saves lives AND money in the long run. As you know, DNA is the fingerprint of the 21<sup>st</sup> Century. By taking DNA at the time of arrest for felony

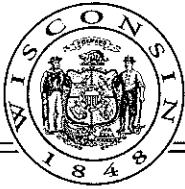
charges, Wisconsin's law enforcement officers will be able to save time and money by avoiding lengthy investigations. The Katie Sepich murder investigation is a classic example of this. The investigation lasted three years instead of three months costing the state of New Mexico over \$200,000.

Not only will we be freeing up resources for our law enforcement community, but this legislation also allows us to place repeat offenders in prison, prevent future crimes from taking place, and exonerates those who otherwise may have been found guilty. Our ability to quantify these types of savings is nearly impossible, but just because the calculations are difficult doesn't mean the savings do not exist.

DNA collection is not a complicated procedure and simply requires a swab of the cheek. We currently collect a photo with fingerprints at the time of arrest, already a valuable resource for law enforcement. I feel that it is our obligation to provide them with the most up-to-date technology available to keep our families safe. Collecting DNA at the time of arrest IS that technology.

Just like the electric typewriter of the early '70s, DNA gives us a clear, concise, written report – helping us more efficiently and effectively fit the pieces of the crime puzzle together to save lives.

The clock is ticking. Every day that we do not collect DNA samples at the time of arrest someone's child is being brutally raped and murdered.



## State Senator Sheila Harsdorf

Date: December 1, 2009

To: Sen. Committee on Judiciary, Corrections, Insurance, Campaign Reform, and Housing

Fr: State Senator Sheila Harsdorf

Re: Senate Bill 336 – DNA testing on felony arrest

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Chair Taylor and Committee members:

I would like to thank you for holding a public hearing and allowing me to testify in support of Senate Bill 336, which calls for the collection of DNA samples on felony arrest.

The proposal to collect DNA samples on felony arrest was brought to my attention earlier this year by a national effort seeking to pass this legislation in every state. Currently, 21 states and the federal government have passed similar legislation to collect DNA samples on felony arrest.

I have authored this legislation with Representative Hraychuck given the positive results seen in other states that have this law in place, including:

- Saving lives by cutting short career criminals that rape and murder,
- Saving money by reducing investigation time, prosecution time, and court time,
- Exonerating the wrongly accused,
- Ensuring a better, streamlined process to collect DNA samples – when doing at the same time as fingerprinting and mug shots, and
- Providing relief to the families of victims.

Under current law, Wisconsin collects samples of DNA from convicted felons and other offenders identified by statute. The DNA sample that is collected from these individuals is analyzed and placed into the state DNA database, which is administered by the Department of Justice. This data is valuable for law enforcement agencies in identifying criminals and providing evidence for trials.

The legislation we have drafted would require the collection of DNA samples when an adult is arrested on a felony charge and when a juvenile is arrested on certain felony charges relating to sexual assault. These are the same offenses that currently collect DNA upon conviction.

Under current law, the DNA sample collected from an offender may be expunged from the DOJ database if the felony conviction is reversed, vacated, or set aside, and the offender requests the data to be expunged. If the offender is found not guilty, the charges are dismissed, or no charges are brought within one year of the arrest, the offender may request the DNA sample to be expunged from the database. This process is similar to the one set forth in state statutes for expunging fingerprint records.

I urge your support and timely passage of this legislation.

## Frequently Asked Questions about *DNA Saves*

### 2009 Senate Bill 336

**Q:** Would this bill require DNA samples for every arrest, even misdemeanors?

**A:** No, this bill requires DNA samples on *felony* arrests and every juvenile arrest wherein that certain sexual assault offense would be a felony if committed by an adult.

**Q:** Innocent people get arrested too; does their DNA remain part of the database?

**A:** The bill allows an individual to have their sample removed from the database if charges are dismissed; sentencing is vacated or set aside; or reversed. This process is identical to current law which allows individuals to have their DNA sample removed if their conviction is overturned. Also, if the prosecution fails to file charges within a year of the DNA sampling, an individual can have their sample removed.

**Q:** Asking for a sample to be removed is one thing, but does the State have to grant that request?

**A:** Yes, page 5 lines 24-25 states, "...the laboratories **shall purge** [emphasis added] all records and identifiable information in the data bank pertaining to the person..."

**Q:** News reports have outlined thousands of cases of DNA not collected after conviction, as is current law. Why would you expand it to arrest?

**A:** Reforming the method of collecting DNA, by collecting it at arrest when doing fingerprints and mug shots, will help ensure better collection for the future.

**Q:** How is the DNA sample used and is there a precedent?

**A:** Information for identification purposes, such as fingerprints and mug shots, are taken today at arrest. DNA is the fingerprint of the 21st century and serves the same identification purposes. Wisconsin would not be the first state to implement DNA testing on arrest. The federal government has a similar law, along with 21 other states. DNA testing on felony arrest is not a new concept. Virginia has had successful implementation of a similar law since 2002, and reports over 200 "hits" to their database since their law's implementation.

**Q:** Wisconsin is facing tough budgetary times. Can we afford this?

**A:** Catching a serial offender sooner rather than later saves money on investigation costs, not to mention the value of human lives saved. If you add up the costs of a investigation, the costs to society when serial offenders are free, and the personal costs to families, the benefits of DNA collection at arrest are extraordinary.

**Q:** How is the collected DNA protected?

**A:** State law prohibits the dissemination of DNA samples and information obtained from the analysis of the samples in a manner that is inconsistent with state law. Penalties are in place for violating this law. Statute 165.77(5) f defines the penalties.

**Q:** Is the proposal due to just one case?

**A:** DNA databases work and they are more effective when felony arrest samples are included. Empirical studies show that DNA sampling on felony arrest prevents violent crime. 21 states and the federal government already have DNA collection at felony arrest, and our primary goal of stopping repeat offenders remains, even as collecting it at arrest will be a beneficial administrative reform.

**Q:** Is this constitutional?

**A:** Wisconsin would be the twenty-second state to pass this type of legislation in addition to the federal government according to the National Council of State Legislatures. State DNA testing on felony arrest laws have survived court challenges across the country.

**Q:** Is DNA that valuable in solving crime to necessitate this type of law?

**A:** The FBI estimates that a false positive match of all 13 loci used in forensic DNA testing would be about 1 in 13 billion except in the case of identical twins. By comparison, experts estimate eye-witness accuracy is about 50% or about a 1 in 2 chance of being wrong. DNA testing matches DNA from 13 loci to derive this level of accuracy. Only one-tenth of one percent of human DNA differs from one person to the next, but by using these 13 loci, scientists can construct a DNA profile that is unique to an individual.

**Q:** What will stop the DNA data from being used for underhanded and unintended purposes?

**A:** The DNA used is referred to as "junk DNA," consisting of the 13 loci mentioned above. This information provides no information that would indicate the health or genetic make-up of an individual. The 13 loci cannot be used to predict the health or discover genetic indications of an offender.

To: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

Re: Testimony on 2009 Senate Bill 336

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DNA Saves  
December 1, 2009

We continue to support the DNA Saves legislation going before the Senate Committee today. Tomorrow, December 2<sup>nd</sup>, marks 20 months since our daughter Brittany was brutally murdered in her off-campus apartment. We are unsure if this legislation would be beneficial in Brittany's case, but our hope is that it would help bring closure to other families going through similar circumstances. Our ultimate goal is to get dangerous criminals off the streets so that other families do not have to endure the pain and sadness our family has had to after losing our daughter.

We have the technology; we owe it to the victims of violent crimes to get them the justice they deserve. This bill would also help promote the safety of the general public and expedite criminal prosecution of offenders.

Kevin and Jean Zimmermann  
Marshfield, Wisconsin



David A. Clarke, Jr.  
Sheriff

County of Milwaukee  
**Office of the Sheriff**

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November 30, 2009

To: Committee on Judiciary, Corrections, Insurance, Campaign Finance  
Reform, and Housing

The Honorable Senator Lena Taylor (Chair)  
The Honorable Senator Jim Sullivan (Vice-Chair)  
The Honorable Senator Jon Erpenbach  
The Honorable Senator Glenn Grothman  
The Honorable Senator Randy Hopper

On September 10, 2009, AG Van Hollen stated that his review of the events surrounding the then estimated 12,000 unaccounted for DNA samples in Wisconsin was underway, and would result in change:

*"I am committed to solving an identified problem with actions based on sound recommendations. If failures dating back to 2001 are identified at the Crime Lab or anywhere else in the system that resulted in this missing profile, rest assured, changes will be made."*

In related timing, today's committee hearing seeks to investigate the viability of requiring, essentially, all persons arrested for a felony in Wisconsin to provide a biological specimen for deoxyribonucleic acid analysis.

I offer, today, the voice of some experience in such an endeavor.

Law enforcement in our state, and in fact our nation, has been taking and processing identification samples from those in our custody for generations: They're called fingerprints. In Milwaukee County, my agency booked over 44,000 inmates last year alone; over 49,000 the year before that. So there are over 93,000 samples that we took over a two-year period. In each case, we process them, and send them along to the FBI. Seamlessly. If there is a problem with a submission, we find out within hours and capture another sample. Fairly seamlessly.

Senators, I believe that it is time for professional law enforcement to catch up with modern technology and modern science, and bring all of the technologies that we have to bear on the issues of safeguarding our citizenry. DNA is the fingerprint of the twenty-first century.

This past June, the US Supreme Court reiterated that DNA possesses a unique ability to, "...free the innocent and convict the guilty." All 50 states authorize the collection and analysis of DNA samples from convicted offenders and enter resulting DNA profiles into the federal Combined DNA Index System ("CODIS"), which the FBI has established and currently holds almost 7 million records. However, only 15 of our brother and sister states have chosen to collect DNA samples from individuals they arrest (including, most recently California, which expects to nearly double the growth rate of its database, to 400,000 profiles a year from 200,000.)

But since 2004, when federal DNA sample collection categories were expanded by the "Justice for All" Act, our federal LE brothers and sisters have accomplished the collection of DNA samples from all arrested federal felons.

Why does the federal government allow such liberal collection of DNA? They recognize that the emergence of DNA identification technology holds vast potential for use in the criminal justice system. In support of this position, the Supreme Court has proffered that DNA constitutes "genetic fingerprints," that can be used to identify an individual uniquely, but do not disclose an individual's "traits, disorders, or dispositions" (*United States v. Kincade*)

As the federal publication *DNA-Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction* informs us:

*As with fingerprints, the collection of DNA samples at or near the time of arrest also can serve purposes relating directly to the arrest and ensuing proceedings. For example, analysis and database matching of a DNA sample collected from an arrestee may show that the arrestee's DNA matches DNA found in crime scene evidence from a murder, rape, or other serious crime. Such information helps authorities to assess whether an individual may be released safely to the public pending trial and to establish appropriate conditions for his release, or to ensure proper security measures in case he is detained. It may help to detect violations of pretrial release conditions involving criminal conduct whose perpetrator can be identified through DNA matching and to deter such violations. The collection of a DNA sample may also provide an alternative means of directly ascertaining or verifying an arrestee's identity, where fingerprint records are unavailable, incomplete, or inconclusive. Hence, conducted incident to arrest, DNA-sample collection offers a legitimate means to obtain valuable information regarding the arrestee.*



Earlier this year, at our annual awards ceremony, Ms. Jennifer Thacker, the National President of the Concerns of Police Survivors, reminded us of a quote from Mohandas Gandhi: "Be the change that you want to see in the world."

Perhaps we might take that to heart this morning.

Are we as Wisconsinites are ready to stop relying on a technology that was developed in the 1800s, and begin capturing DNA samples at the time of felony bookings?

Thank you for your consideration of this public safety issue.

Sincerely,

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Edward H. Bailey, Deputy Inspector  
Adjutant, Office of the Sheriff  
Milwaukee County